

**CEMETERY TASK FORCE
MEETING MINUTES
ROOM 179A, 1400 EAST WASHINGTON AVENUE, MADISON
APRIL 25, 2000
9:30 A.M. to 12:30 P.M.**

PRESENT: Thomas Hanlon, Ed Huck, Dorinda Floyd, Sarah Kamke, Daniel Kilkenny, E. Glen Porter, III, Jon Ruatti, William Cress, Laurel Schaftary, Leslie Eisenberg, Dewey Mathewson, Bill Smith, Richard Stadelman, Peter Gunderson, David Stucki, and Michael Schuman (arrived at 9:56 a.m.)

EXCUSED: Bill Smith, Leroy Mixon, Marie Drescher, Willa Jean Moore, Kelly Coleman

R&L STAFF: Secretary Marlene Cummings, Deputy Secretary William Conway, Cletus Hansen, Becky Fry; Jacquelynn Rothstein, Legal Counsel; Steven Gloe, Gene Kleinert; Xiaodong Le; Mark Mackenzie, DOE

GUESTS: Jodi Helgeson, WI Register of Deeds/WI State Old Cemetery Assoc.
Bernie Schroedl, Wenta Monuments, Milwaukee
Sherri Ramaker, Ramaker & Associates
Kathy Markeland, Wisconsin Catholic Conference
George Petak

CALL TO ORDER

Clete Hansen called the meeting to order at 9:34 a.m.

APPROVAL OF AGENDA

The agenda were informally approved.

APPROVAL OF MINUTES (4/23/99)

The minutes were informally approved with the correction of the word “interned” to “interred” on page 3 under “Opening and Closing Fees.”

ADMINISTRATIVE REPORT

Clete Hansen, Division Administrator

Clete Hansen introduced department staff and asked Task Force members to introduce themselves.

Clete Hansen informed the Task Force that the Department has been working on a legislative draft since the Task Force met last year. He explained that Representative Seratti's and the Moore/Morris-Tatum drafts got ahead of work on our draft.

Roster

The Task Force received an updated roster. Clete Hansen advised Task Force members to indicate changes or corrections.

Credential Holder Query

Clete Hansen informed the Task Force that the verification service was now available on the Internet to verify licensure.

The Task Force received a draft of the May 2000 Regulatory Digest.

DISCUSSION OF POTENTIAL STATUTORY CHANGES

DIVERGENT ISSUES IN SERATTI PROPOSAL AND R & L PROPOSAL

Creation of an Advisory/Disciplinary Board

Clete Hansen explained the process for setting up a Cemetery Board; the member selection process, the complaint procedures, the screening process and the authority of this type of Board.

Secretary Cummings stated the industry would be state-regulated by setting standards through statutes and administrative rules.

Steve Gloe explained the complainant's part in the enforcement procedures.

Representatives of the Badger State Cemetery Association and the Wisconsin Association of Monument Builders of North America indicated their support of the creation of an Advisory/Disciplinary Board.

Task Force members were in favor of membership consisting of professional and public members.

A recommendation was made to include a member from the Department of Justice, a district attorney or a representative of the Department of Consumer Affairs.

Definition of "Cemetery"

Ed Huck explained the language "a place where burial space is located and is tax exempt." He referred to Secretary Cummings' question about having cremains in the home and indicated that the home would not be tax exempt and thus not be defined as a cemetery. He also brought up the issue of the cultural practice of someone burying family members on their own property or

having a farm cemetery. He explained that by using the term “tax exempt,” these types of situations would not fall under the definition of a cemetery.

Clete Hansen explained that if the language “tax exempt” fits legally and doesn’t exclude some situations that should not be excluded, the term might be useful.

Relating to the department’s language stating “a place for final disposition of human remains, but not a location where the cremains of less than 10 people are kept”, a situation was addressed where cremains are being placed at an arboretum. The question was raised that if 11 cremains were kept at such a property, would it be regulated just as any other cemetery.

Clete Hansen indicated that charging a fee or operating a place where you bury cremains, would make it a cemetery and it would have to be licensed.

Leslie Eisenberg questioned the tax exempt status regarding the definition of burial space (any space used or intended to be used for the burial of human remains). Potentially a cemetery could be created with burial spaces, none of which have been sold, and still receive tax exempt status. Thus, someone could be receiving tax exempt status for what is defined as a cemetery and yet have no one buried there.

A member indicated that a specific church allows ashes to be scattered but the regulations of the church do not permit any markers or designation of specific spaces. To make this into a cemetery when there is no intent to put up markers or designate spaces would not be the intent of the law and a provision should be made to allow this practice.

Another comment concerning the tax exempt language was that a cemetery may be tax exempt, but if you have a vault manufacturing facility on the cemetery or a monument display, that area is no longer tax exempt.

Clete Hansen clarified that this would be considered an additional business on the cemetery grounds, thus causing the tax exempt status to not apply to that situation.

The Badger State Cemetery Association has taken a position that anyone that offers to the public, a place to deposit deceased human remains in any state of decomposition and claims to take care of it and takes a fee for it, is a cemetery. The fear is that anyone such as a bar, club, etc. that are not traditionally a cemetery could hold remains, and because they are a taxable entity, would not be regulated.

Ed Huck explained that cemeteries are zoned. If someone is not taxable and are not zoned, they are in violation of local ordinances. If they are zoned as cemetery, they are going to be tax exempt.

Jacquelynn Rothstein explained that there are some cemeteries and family burial sites that are not zoned as cemeteries.

Leslie Eisenberg explained that under Chapter 157.70, a burial site means any place where human remains are buried.

Ed Huck explained that the department will have to determine what is to be included and what is to be excluded in regulation and that will have to be defined by definition. He further explained that from a functional standpoint a family burial site may be a cemetery but from a regulatory standpoint it might be a different matter.

Jon Ruatti questioned that if cremation is final disposition, how can that be included in the definition of a cemetery?

A comment was made that if cremation is final disposition, that should end the department's interest in it. Should another department such as Consumer Protection regulate in this situation, in terms of contractual issues.

Secretary Cummings advised that it is not the interest of the department to over-regulate. She suggested using the same definition that the State Historical Society uses with some exceptions to exclude the potential of regulating family plots.

A comment was made that if there is one body buried in a place, it would be a cemetery, but there could be numerous cremains and if that is final disposition, it is not a cemetery. Close consideration must be given to the definition.

A comment was made relating to consumer protection and the concern of people as to what happens to columbariums constructed by or in churches when churches close or consolidate.

Jon Ruatti stated that in the Catholic religion cremains are treated the same as remains and a columbarium is not found at a Catholic church. A parish may disappear but a bishop will never abandon a cemetery.

A suggestion was made in regards to the family plot or single burial site, to requiring a property owner to put the family plot or single burial site on record with the Register of Deeds.

Clete Hansen indicated that more work would be done in relation to the definition and comments and suggestions would be considered.

Change "Cemetery Lot" to "Burial Space"

Clete Hansen indicated that the Department used the same language as the Seratti draft in relation to changing the term "cemetery lot" to "burial space." He further indicated that there was only one spot where the term "burial space" did not fit and the words "grave space" was used in the department's draft.

A suggestion was made to review 157.10(1) of the R&L proposal dealing with a multiple grave space, in relation to using the term "burial space."

Role of the Department of Financial Institutions (DFI) in the Organization of Cemeteries

Clete Hansen indicated that the current law allows small, non-profit cemeteries to create themselves by filing documents of creation with the Register of Deeds. The R&L draft indicates that all cemetery associations would be created by going through DFI, whereas Seratti's bill would require only licensed cemeteries to organize through DFI.

A question was raised whether there would be some sort of carry-over provision for existing organizations.

A question was raised whether a tribal cemetery would be regulated.

Leslie Eisenberg reported that the state has no jurisdiction over a cemetery on tribal land. However, if the cemetery is on private land even if that land is owned by a Native American tribe, the state does have jurisdiction and it would be regulated.

Management Reserve Fund

The Seratti bill creates a fund to finance the maintenance and management of cemeteries that do not have sufficient funds or any other means to fund a cemetery's operation. This was opposed by R&L.

One comment indicated agreement with the department that there will be insufficient funds to meet the demand and the speaker felt it might create an incentive to abandon cemeteries. A compromise would be some sort of municipal liability such as absorbing a certain level or portion of the assessed value before it would get to a state fund.

A comment was made that local government has no oversight authority or no knowledge of the physical condition of a cemetery until it is neglected or abandoned. How would local government monitor a cemetery?

The Seratti bill proposes it is a state and industry responsibility for oversight and the ultimate responsibility for abandonment should be dealt with at the state level. The property tax payers and the consumers must be protected against multi-national corporations, which the current law does not address.

A Task Force member commented that if the local municipality could not assist the cemeteries, there could be numerous abandoned cemeteries in his county alone. The member indicated that at the present time approximately 20% of the cemeteries in that county get some type of municipal assistance.

A question was raised as to whether any fiscal estimates had been made under the Seratti proposal, and how that money would be distributed.

A representative of the Seratti proposal indicated that the draft has language for trusteeship, which is the mechanism for which the money would be distributed. It was estimated that approximately \$450,000 would be available for distribution.

Ed Huck explained that in the next 25-30 years there would be a significant increase in the number of elderly. The Seratti proposal is trying to protect the consumer and taxpayers by creating a law that foresees potential problems and deals with them now rather than when there is a crisis situation as cemeteries fill and multi-national corporations possibly abandon them.

Steve Gloe suggested focusing on language created to keep business from walking away and from poor management of cemeteries.

Opposition was addressed to the Seratti bill assessing a fee for every death certificate. It would be a burden assessed to everyone that dies in Wisconsin whether or not they use a cemetery for the burial of the remains or cremains. It was suggested that general-purpose revenue should provide the necessary funds to finance the maintenance and management of cemeteries that do not have sufficient funds, rather than a tax on death certificates.

It was suggested that for licensure, a surety bond or insurance policy be required to guarantee the operation of a cemetery in the event of default.

Clete Hansen stated a second aspect of the proposal for the cemetery management fund is that the court would be able to appoint DRL as trustee and charge DRL with the responsibility to manage a cemetery that has become abandoned.

Secretary Cummings indicated DRL being appointed as trustee for abandoned cemeteries would not be supported by the department. She indicated that the department's role to prevent people from abandoning cemeteries would be to require the ceterierians to report to the department when the cemetery fills and an audit should be made to find out what causes cemeteries to be abandoned.

Ed Huck explained that local government is not qualified to run a cemetery or to reconcile with a consumer whose rights have been violated by the abandonment of a cemetery. He questioned what needs to be done to make a better connection between the laws that are designed to oversee the industry and protect the consumer and how do we reconcile with a consumer that has been violated and the municipality is left with the responsibility of the abandoned cemetery.

Discussion was held on perpetual care funds and when a cemetery fills up, will there be enough money to maintain the cemetery and for how long.

Clete Hansen informed the Task Force that Representative Seratti had indicated that she was thinking about the possibility of holding one or more hearings during the summer.

Conveyance Requirements

Clete Hansen indicated that both proposals expand on what type of actions require the approval of the department.

A question was raised as to whether any “grandfathering” language was proposed regarding existing cemeteries that are religious in nature where platting was never required.

It was explained that in Seratti’s bill, the platting requirement takes effect the date of the bill. It is not retroactive.

The department will take another look at this issue.

Location of Burial Spaces and Installation of Burial Marker

Clete Hansen indicated the intent of the Seratti proposal is to provide accurate information to the consumer.

Wisconsin Association of Monument Builders of North America indicated it is the monument dealer’s responsibility to mark graves, not the cemetery’s.

WCC believes that, because accurate records of burials are kept, it is not the responsibility of the cemetery to place a marker of any kind on a grave. It would be financially impossible for most cemeteries, especially a small parish cemetery and it is the family’s responsibility.

Badger State Cemetery Association opposes having to place a marker on graves.

Discussion was held on different types of markers that could be used, the cost of the markers, and recovering the costs of those markers.

Discussion was held regarding different ways of keeping burial records and the possibility of not being able to locate where someone is buried if there is no marker or if records are destroyed or lost.

A suggestion was made that some type of identification be placed on the casket to prevent having to open caskets for identification.

A member commented that placing permanent markers on a gravesite is almost impossible due to the expense. Better platting requirements and record keeping could prevent having to place markers on graves.

A Committee member pointed out that cemeteries do not know if the family will place a marker on the grave within a year. The Seratti proposal would not be cost effective.

A comment was made that the requirement must be specific as to whether a marker is required or if a cemetery must put it in by law. This requirement could potentially eliminate the monument industry.

Municipal Takeover Provision

Clete Hansen explained that the department kept in its proposal, a variation of the language borrowed from a Cemetery Task Force in Florida, relating to maintenance of the cemetery. He

indicated that the Seratti proposal does not contain that idea as a viable alternative to their cemetery management fund. However, the Department felt it gave municipalities a little more leverage about what is going on in their communities with their cemeteries and the maintenance of those cemeteries.

Auditing Requirements

Clete Hansen explained the two bills differ in that the Seratti bill requires all licensed cemeteries to obtain an audit with opinion by a CPA every four years. The R&L bill proposes that the department could audit cemeteries at its discretion. This would eliminate the high cost of a CPA audit.

Ed Huck questioned how determination would be made if there were a problem in a particular cemetery without knowing the fiscal condition of that cemetery.

One comment was made that the department may be over-estimating the cost and under-estimating the need for audits. Preventing the misuse of consumer funds is important and audits should be required.

A question was raised in regards to the confidentiality of records as to what part of the audit information would be public record and that this issue should be addressed in the legislation.

Clete Hansen explained that at the present time the law says that the audit report is not an open record. He indicated that whether the audit only pertains to trust funds and not the other business accounts of the cemetery would be looked at carefully by religious cemeteries.

Cemetery Registration

Clete Hansen explained that the Seratti bill calls for a one-time \$5 fee for cemeteries that do not meet the licensure criteria. The R&L bill calls for an initial \$5 fee and a biennial \$5 renewal fee.

Licensed Cemeteries

Clete Hansen explained that the Seratti bill has additional criteria which require licensure of only those cemeteries that are 5 or more acres in size or sell an average of 10 or more burial spaces per year over a 2-year period to be licensed. The R&L bill requires licensure of only those cemeteries that sell 10 or more burial spaces per year or that have \$100,000 or more in trust funds. He suggested that merging the two bills would result in 3 criteria.

A comment was made that the criteria of selling 10 or more burial sites requiring licensure is wrong; 20 is bad but more reasonable than 10.

A question was raised about the Seratti bill regarding licensure for cemeteries that are 5 or more acres and whether that refers to platted ground or land size.

Ed Huck explained that the intent of the bill was to be the platted ground portion of the cemetery.

Licensed Cemetery Salespersons

A question was raised that if a person takes over and sells a grave space while the licensed salesperson is on vacation, does that person need to be licensed?

Clete Hansen indicated that usually when there is a licensing requirement for a specific kind of activity, a person must be licensed to do that activity.

It was suggested that the focus of legislation should be the duty to maintain as a reasonable standard and not possible criminal prosecution for failure to maintain those standards. It was suggested that people that end up responsible for abandoned cemeteries should not be under the threat of criminal prosecution because they had not met someone else's idea of a reasonable standard of care. Taking out some of that threat should be considered.

Clete Hansen indicated that the department would continue to work on bringing the two drafts closer together.

Secretary Cummings thanked the Task Force for attending the meeting. She indicated that the suggestions and concerns made by the Task Force would be considered when trying to work out a draft acceptable to both the Seratti representation and DRL.

ADJOURNMENT

The meeting was adjourned at 12:29 p.m.